



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

JUN 23 2004

Regulatory Branch

SUBJECT: File Number 21581S

Mr. Skip Sowko
California Department of Transportation
P.O. Box 23660
Oakland, California 94623-0660

FILE COPY

Dear Mr. Sowko:

This letter is in reference to your submittal of May 11, 2004 concerning Department of the Army authorization to conduct work and place fill within the jurisdiction of the Corps of Engineers for the construction of the Devil's Slide Tunnel Project on State Route 1 (milepost 36.6 to 41.0) between the communities of Montara and Pacifica in San Mateo County, California. The proposed project consists of approximately 6,500 feet of new alignment along Route 1 including twin tunnels 4,000 feet long, an approach to the North Portal 1,500 feet long, and an approach to the South Portal 1,000 feet long. The Tunnel Project will result in approximately 3380 cubic yards of fill placed into 0.13 acre of jurisdictional wetlands and an additional estimated 688 cubic yards of fill placed into 0.11 acre of Waters of the U.S.

Caltrans will restore and enhance approximately 0.72 acre of wetlands at an off-site location in Montara, the Charthouse Mitigation Site, to compensate for unavoidable impacts to wetlands and waters subject to the jurisdiction of the Corps. Caltrans will restore and enhance additional areas on this site to meet the mitigation requirements of other regulatory agencies. Those restoration and enhancement activities will affect approximately 3.2 acres of degraded seasonal wetlands. This site is located east of Route 1 and just north of the former Charthouse Restaurant and is owned by the Peninsula Open Space Trust.

Based on a review of the information you submitted and our March 4 and 11, 2004, inspections of the project site, your project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 14 *Linear Transportation Projects*, NWP 27 *Stream and Wetland Restoration Activities*, NWP 33 *Temporary Construction, Access and Dewatering* and NWP 39 *Residential, Commercial and Institutional Developments*, (67 Fed.Reg. 2020, January 15, 2002), pursuant to Section 404 of the Clean Water Act (33 U.S.C. Section 1344). See Enclosure 1. All work shall be completed in accordance with the attached plans and drawings titled "Devil's Slide Tunnel Project: South Portal / OMC / Fill Disposal Site and Drainage Areas Wetland Impacts and North Portal / Shamrock Ranch Drainage Area Wetland Impacts" and "Attachment A" received June 16, 2004.

The project must be in compliance with the General Conditions cited in Enclosure 2 for this Nationwide Permit authorization to remain valid. Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, Enclosure 3, verifying that you have complied with the terms and conditions of the permit. Non-compliance with any condition could result in the revocation, suspension or modification of the authorization for your project, thereby requiring you to obtain an individual permit from the Corps. This Nationwide Permit authorization does not obviate the need to obtain other State or local approvals required by law.

This authorization will remain valid until the NWP's expire on March 18, 2007, unless the Nationwide Permit is modified, suspended or revoked. If you have commenced work or are under contract to commence work prior to the suspension, or revocation of the Nationwide Permit and the project would not comply with the resulting Nationwide Permit authorization, you have twelve (12) months from that date to complete the project under the present terms and conditions of the Nationwide Permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the San Francisco Bay Regional Water Quality Control Board (RWQCB) and a concurrence from the California Coastal Commission with your certification that your project will comply with California's Coastal Zone Management Act. If the RWQCB fails to act on a valid request for certification within two (2) months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. If the Commission fails to act on a valid request for concurrence with your certification within six (6) months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the certification and the concurrence to the Corps prior to the commencement of work.

To ensure compliance with the Nationwide Permit, the following special conditions shall be implemented:

1. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (FWS) BO dated December 18, 2000 and amended March 25, 2004 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BO, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take and it would also

constitute non-compliance with this Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

2. Following the installation of the frog-exclusion fencing, environmentally sensitive areas (ESA) shall be fenced using high visibility fencing or otherwise demarcated. The fences shall be in place prior to other construction activities. The ESA shall be off limits to construction activity and personnel at all times.
3. The sediment/frog barrier fence shall be designed so that surface runoff from all areas above and within the construction zones will drain into temporary desilting basins spaced along the construction side of the fence. The spacing of these basins will be determined in the field based on the size and characteristics of the individual drainage sheds involved. Silt deposits shall be removed once they fill more than one-third of any basin or sooner if the integrity of the sediment/frog barrier fence is threatened. Any silt control structure that breaches or is damaged shall be repaired or replaced within 24 hours.
4. Construction of temporary access roads and pier foundations shall be limited to the dry season (April 15 to October 15) to reduce the likelihood of a large-scale silt deposition within Corps jurisdiction or on the valley floor. Requirements of Caltrans Standard Specifications, Section 7-1.01 G, Water Pollution, and project specific Storm Water Pollution Prevention Plan measures shall be implemented in early fall to ensure that erosion in all disturbed areas will be kept to the minimum.
5. All work in Corps jurisdiction shall be conducted between April 15 and October 15 to help minimize impacts to water quality.
6. All project staging and equipment storage areas shall be located away from areas subject to the jurisdiction of the Corps.
7. No debris, oil, petroleum products or other organic material resulting from construction activities shall be allowed to enter or be placed where it may be washed by rainfall or runoff into areas subject to the jurisdiction of the Corps.
8. Following project construction, disturbed areas including access roads, staging and equipment storage areas, etc. shall be returned to pre-project conditions. This shall include, but is not necessarily limited to, grading to establish pre-project contours, removal of debris and planting California native vegetation.
9. The revegetation effort shall include full maintenance of the installed plants during the ten-year plant establishment period (PEP). A ten-year monitoring program shall be implemented after the initial planting to document the success of the revegetation

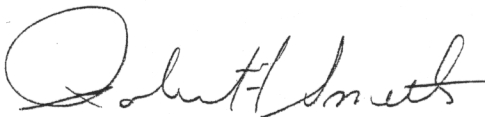
effort. Replanting shall be done as needed during the ten-year PEP to meet the success criteria. Once the soil in disturbed areas has stabilized the fabric silt fences will be removed and hand-carried from the site by monitoring personnel.

10. You shall compensate for unavoidable impacts to wetlands and waters subject to the jurisdiction of the Corps be by restoring 0.72 acres to high quality wetlands pursuant to the "Final Mitigation Plan, Devil's Slide Tunnel Project, State Highway 1, San Mateo County, California" dated May 11, 2004. Maintenance and monitoring of the mitigation site shall be conducted for ten years or until the site has been deemed successful and self-sustaining by the resource and regulatory agencies. In the event of an unanticipated delay or other alteration of the mitigation plan, you shall immediately notify the USACE San Francisco District Regulatory Branch.
11. In the event of any unanticipated discoveries of potential cultural/historic resources you shall immediately halt work in the vicinity of the discovery and contact the appropriate regulatory authorities. You shall complete consultation pursuant to 36 CFR Part 800 to the satisfaction of the SHPO prior to resuming work.
12. During the operational phase, the roadway runoff on the bridges shall be contained and directed northward to a drainage on the existing Route 1 that does not flow to the ponds and their surrounding habitats.

Please have the Declaration of Establishment of Conditions, Covenants, and Restrictions (CC & Rs) (Enclosure 4) completed, and the original CC & Rs recorded with the County Recorder's office or other appropriate official responsible for maintaining record of title to or interest in real property within 15 days. The County will notify us when this authorization is recorded.

Should you have any questions regarding this matter, please call John Yeakel of our Regulatory Branch at 415-977-8472. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available through the Forms and Contacts Block on our website: www.spn.usace.army.mil/regulatory.

Sincerely,



for Edward A. Wylie
Chief, South Section

Enclosures

Copy furnished:

Mr. Jeffrey Jensen
California Department of Transportation
Office of Biological Sciences and Permits
P.O. Box 23660
Oakland, CA 94623-0660

Copies furnished (w/o enclosures):

US EPA, San Francisco, CA
US F&WS, Sacramento, CA
US NMFS, Santa Rosa, CA
CA CC, San Francisco, CA
CA DFG, Yountville, CA
CA RWQCB, Oakland, CA

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14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the U.S., including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of waters of the U.S.; or

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the U.S.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10-acre of waters of the U.S.; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the U.S. to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream. (See General Conditions 9 and 21.);

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g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the U.S. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects), the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit. (See 33 CFR 323.4.)

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27. Stream and Wetland Restoration Activities. Activities in waters of the U.S. associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) Notification: For activities on any public or private land that are not described by Paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish

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vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under Paragraph (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under Paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under Paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency

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executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the U.S. caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

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33. Temporary Construction, Access and Dewatering.

Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322.) The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable). (Sections 10 and 404)

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39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (See Note below.); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such cases

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to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the U.S. were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the U.S. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the U.S. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10 acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream. (See General Conditions 9 and 21.);

i. For discharges causing the loss of 1/10 acre or less of waters of the U.S., the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands); and (5) The type and acreage of any

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compensatory mitigation used to offset the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in Paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in Paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the U.S. to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the U.S. on the project site in excess of the acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of U.S. authorized by NWP 39 cannot exceed 1/2 acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the U.S. based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs under Paragraph (c)(2) above; however, activities that result in the loss of greater than 1/10 acre of ephemeral waters only would require PCNs under Paragraph (c)(1) above).

Nationwide Permit General Conditions - March 18, 2002

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (See 33 CFR Part 330.4(e).) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 Water Quality Certification or Coastal Zone Management Act consistency determination.
7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. Water Quality.
 - (a) In certain states and tribal lands an individual Section 401 Water Quality Certification must be obtained or waived. (See 33 CFR Part 330.4(c).)
 - (b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal Section 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. (Refer to General Condition 21 for stormwater management requirements.) Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams. (Refer to General Condition 19 for vegetated buffer requirements for the NWPs.)

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.
10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (See 33 CFR Part 330.4(d).)
11. Endangered Species.
 - (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or

are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See Paragraph 13(f) below.);

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the U.S. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the U.S. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the U.S. adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the U.S., a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) Form of Notification: The standard Individual Permit application form (ENG FORM 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in Paragraphs (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4 acre of wetlands cannot be created to change a 3/4 acre loss of wetlands to a 1/2 acre loss associated with NWP 39 verification. However, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/2 acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting of its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S., or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

Enclosure 3

Permittee: California Department of Transportation

File Number: 21581S

**Certification of Compliance
for
Nationwide Permit**

"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of the Nationwide Permit."

(Permittee)

(Date)

Return to:

John Yeakel
U.S. Army, Corps of Engineers
San Francisco District
Regulatory Branch, CESP-N-OR-R
333 Market Street
San Francisco, CA 94105-2197

Enclosure 3

Permittee: California Department of Transportation

File Number: 21581S

**Certification of Compliance
for
Nationwide Permit**

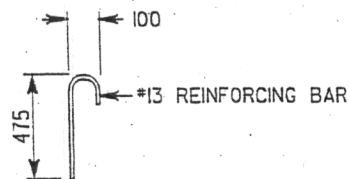
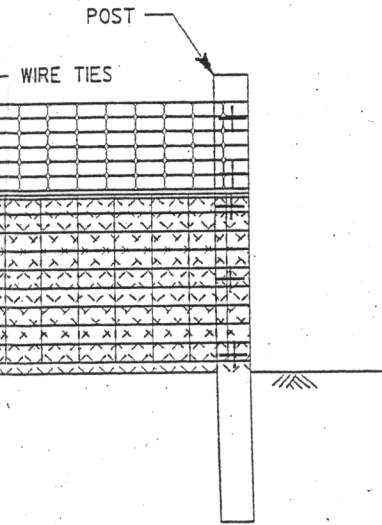
"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of the Nationwide Permit."

(Permittee)

(Date)

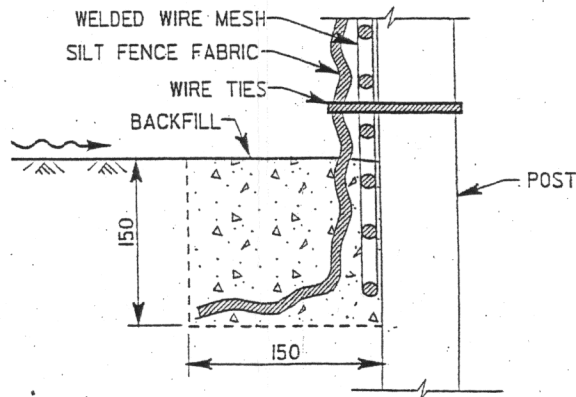
Return to:

John Yeakel
U.S. Army, Corps of Engineers
San Francisco District
Regulatory Branch, CESP-N-OR-R
333 Market Street
San Francisco, CA 94105-2197



STEEL REINFORCING BAR

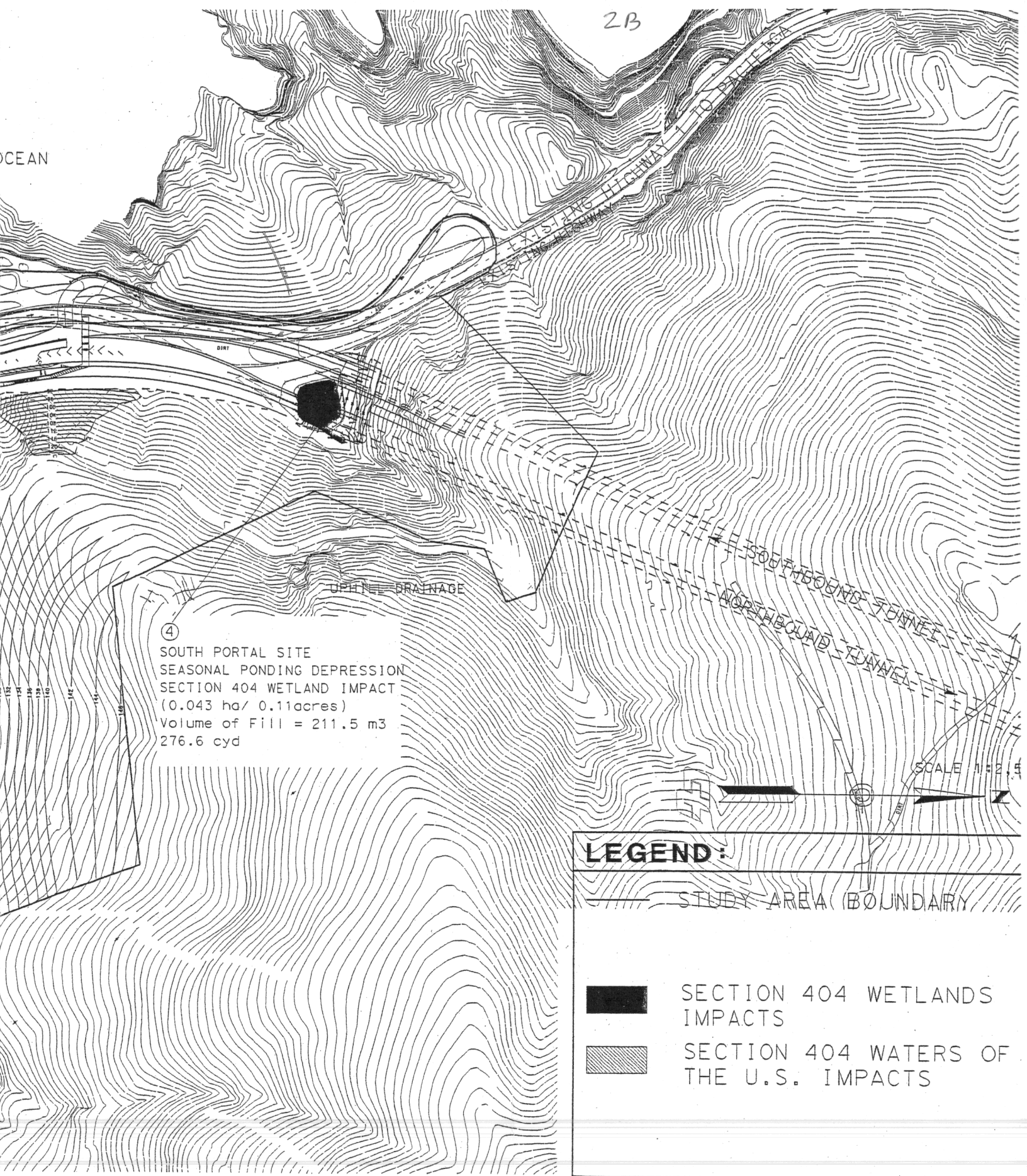
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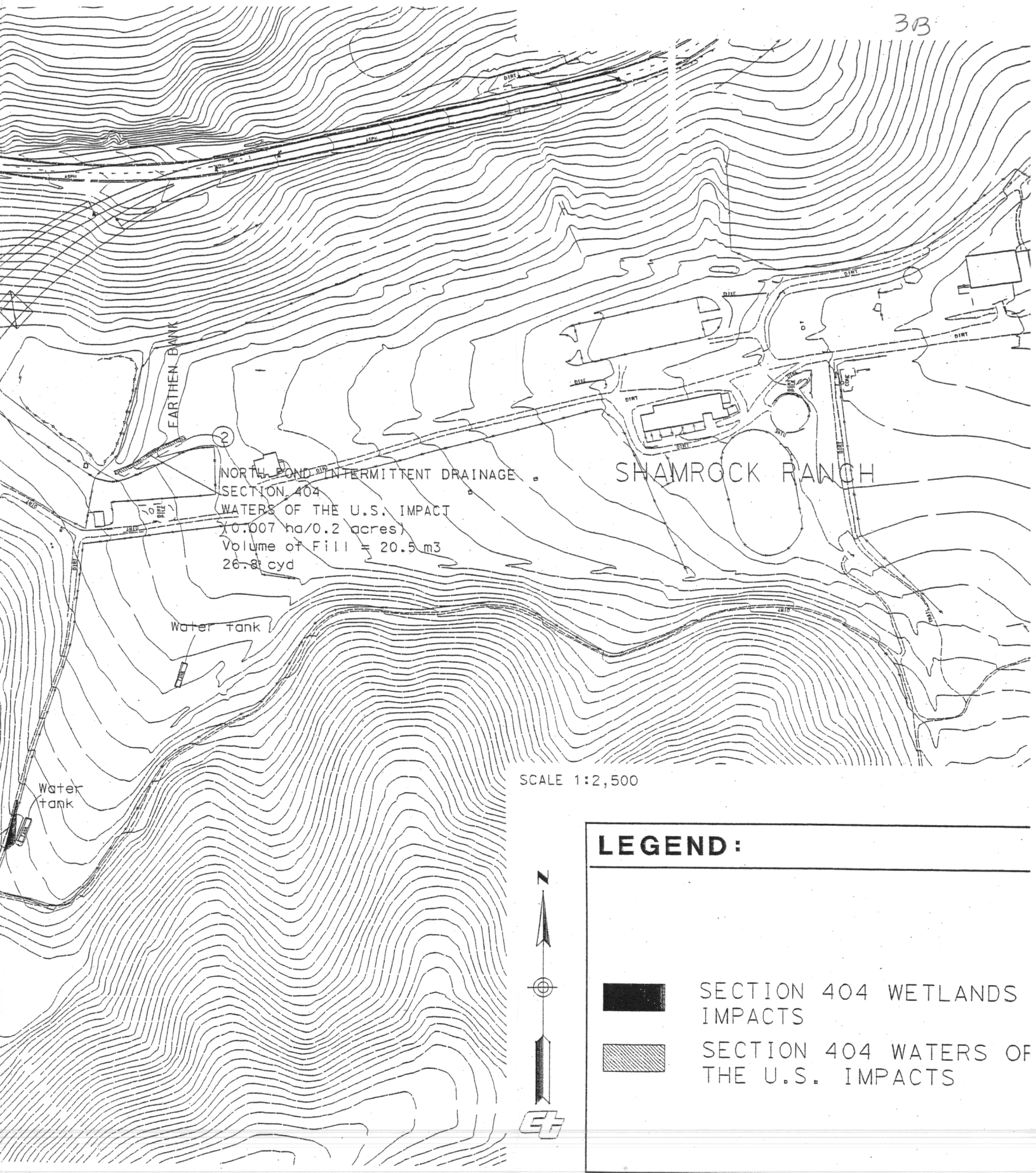
SECTION

KEY TRENCH

ALL DIMENSIONS ARE IN
MILLIMETERS UNLESS OTHERWISE SHOWN



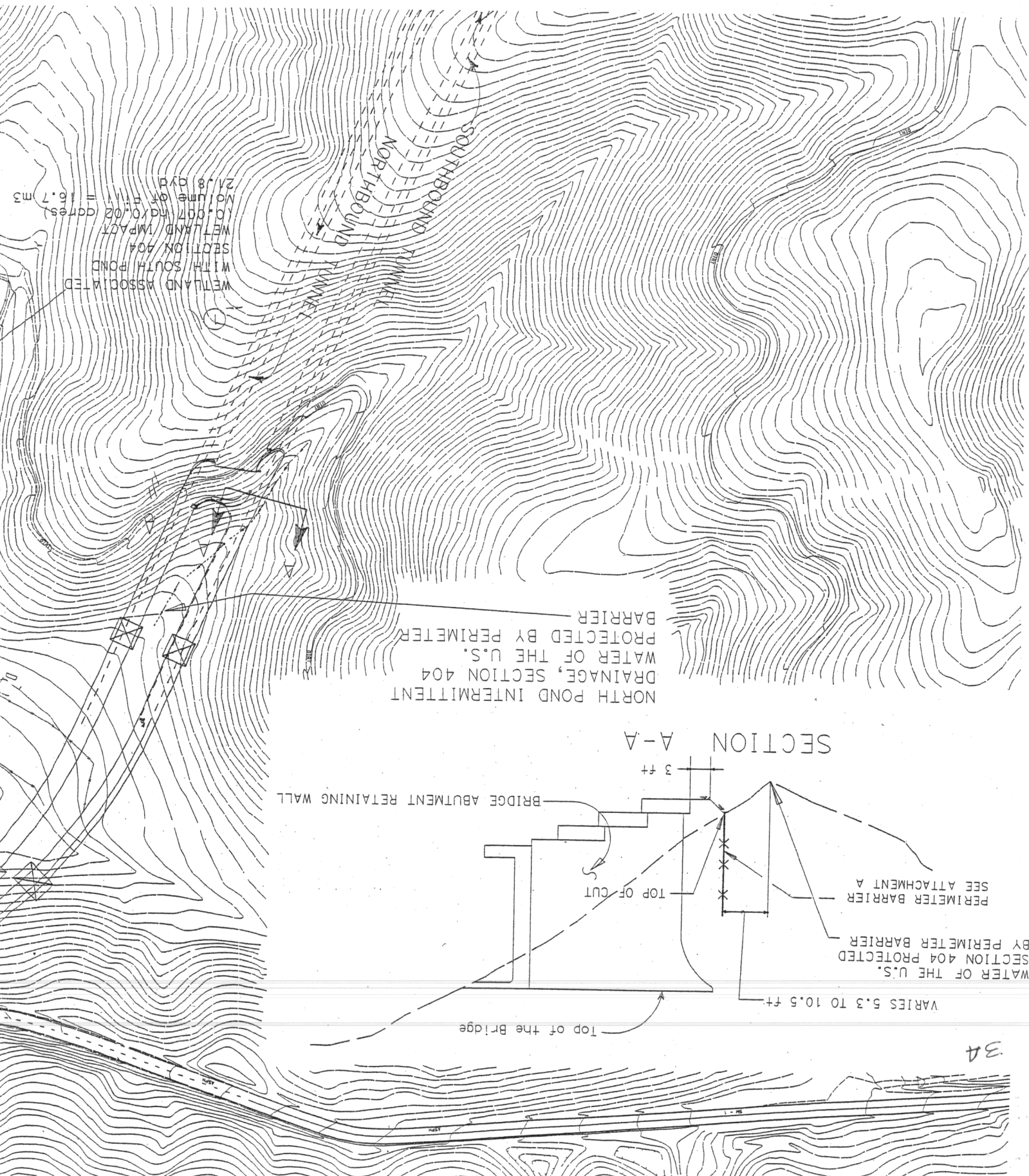
**PROJECT
FILL DISPOSAL SITE
WETLANDS IMPACTS**



ECT
RANCH DRAINAGE AREA

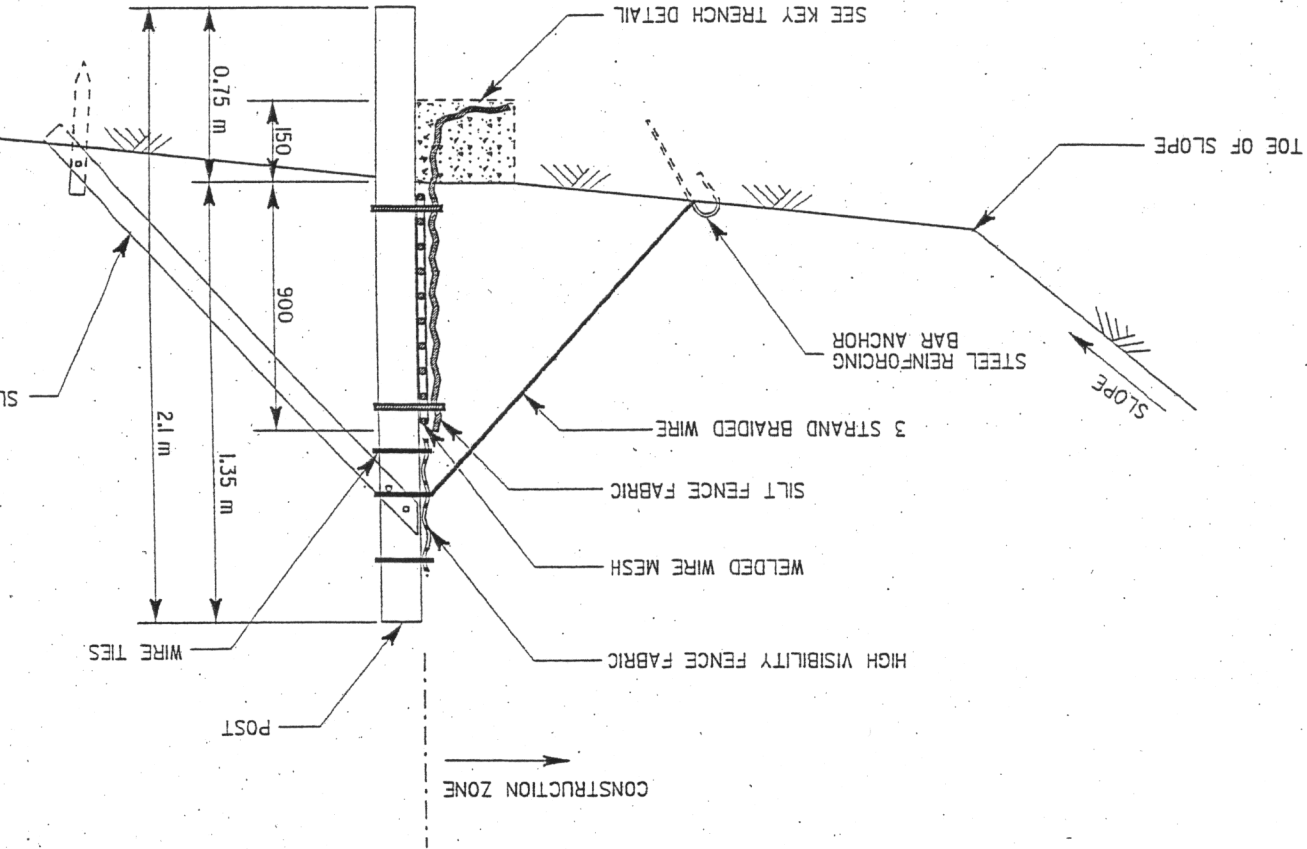
DEVIL'S SLIDE TUNNEL PROJ NORTH PORTAL/ SHAMROCK WETLAND IMPACTS

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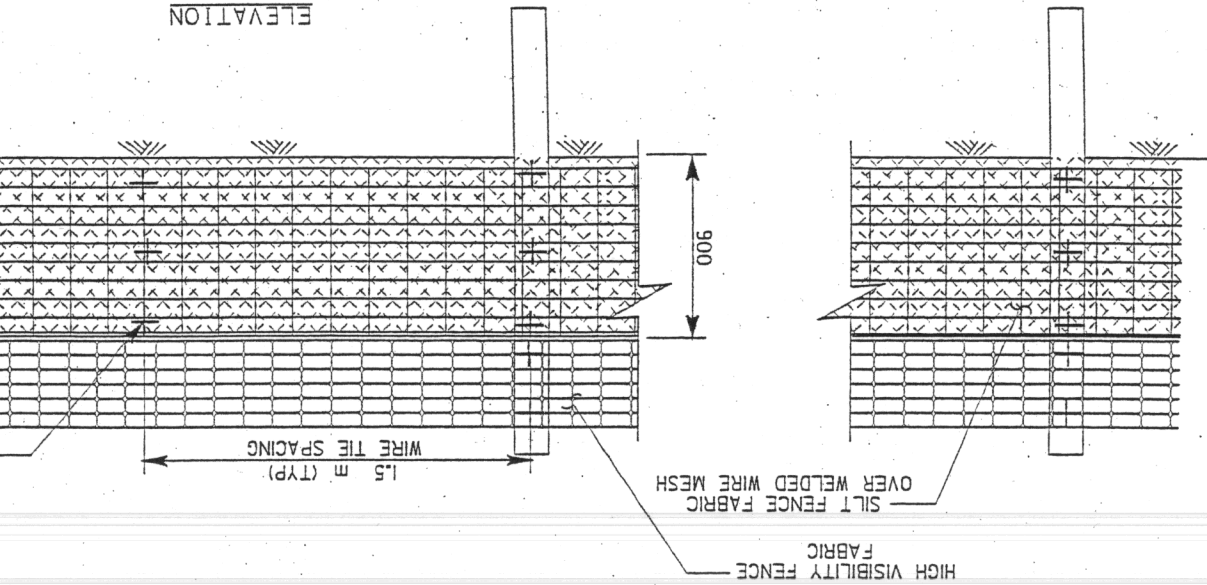


PERIMETER BARRIER

SECTION



ELEVATION



DEVIL'S SLIDE TUNNEL SOUTH PORTAL/OMC/ AND DRAINAGE AREAS

OFFICE OF BIOLOGICAL SCIENCES/PERMITS
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